

House Resources Committee Hearing of February 6, 2002

Testimony of Jonathan Windy Boy

President, Council of Large Land Base Tribes

Good morning, Chairman Hansen and honorable members of the House Committee on Resources. My name is Jonathan Windy Boy, Business Committee Member, Chippewa Cree Tribal Council and I am testifying today in my capacity as President of the Council of Large Land Base Tribes. The Council of Large Land Base Tribes was formed in 2001 to advocate on behalf of a number of Indian tribes that have trust, allotted lands and other lands in the states of Montana, Wyoming, Arizona, New Mexico and Utah. The Council member tribes govern approximately 60% of the roughly 54 million acres in Indian Country. The members of the Council of Large Land Base Tribes express their appreciation to the honorable Chairman and members of the House Committee on Resources for this opportunity to address the Committee.

I am here today to address the following matters, trust management reform, the Cobell litigation, the plan of the Department of the Interior to establish a new Bureau of Indian Trust Assets Management (BITAM) and the associated hardships which Indian tribes are now experiencing because of the current shutdown of the systems within the Department of the Interior for payment of oil and gas allotment revenues and interest to the members of Indian tribes. These matters are causing extreme distress and hardship for members of all Indian tribes, including those Indian tribes that are members of the Council of Large Land Base Tribes. See Appendix A, Statistics on Trust Resources for the Rocky Mountain Region.

The Council of Large Land Base Tribes agrees wholeheartedly with Judge Royce Lamberth in the Cobell litigation that the Department of the Interior has failed dismally in its fiduciary responsibilities to Indian tribes and individual Indian allottees. Trust management by the Department of the Interior has largely been a sorry history of negligent, and in some cases, intentional trust mismanagement that has resulted in the loss of billions of dollars to Indian tribes and individual Indian allottees. However, the Council is extremely concerned with the current actions of the Department of the Interior to perform a radical reorganization of the Bureau of Indian Affairs through the establishment of the BITAM. See Appendix B, affected full time equivalent positions (FTEs) in the Rocky Mountain Region. The Council is concerned that the proposed BITAM does not address the five breaches of trust already found by Judge Lamberth and is not designed in a manner which will lead to the effective reformation of the trust management system. Further, the Council is not convinced that the harm now confronted by individual Indian allottees are being effectively addressed by the Department of the Interior.

The Council of Large Land Base Tribes by its Resolution CLLBT-08-01, attached as Appendix C, has supported the concept of trust reform. However, the Council does not support the BITAM. Sometime in November 2001, the Department of the Interior developed BITAM entirely without consultation with the Indian tribes and individuals who are the beneficiaries of the trust obligations. The Department of the Interior has never provided a detailed description or plan for the BITAM, other than a single sheet organizational chart. The Indian tribes have traveled from Spokane, to Albuquerque, Minneapolis, Oklahoma City, Rapid City, San Diego, Anchorage, and finally, Washington D.C. in pursuit of information which has never been provided.

Without consultation with Indian tribes, on November 20, 2001, the Department of the Interior submitted a request for reprogramming of \$300 million to Congress in order to establish BITAM. The Council, in

Resolution CLLBT-08-01, rejected the BITAM and requested that Secretary Norton withdraw her request for the reprogramming of \$300 million that was intended for the immediate establishment of BITAM.

The Senate Committee on Appropriations responded to Secretary Norton's request for reprogramming of \$300 million by its letter of December 20, 2001 signed by Chairman Robert C. Byrd and the Honorable Conrad Burns. The Committee declined approval of the reprogramming, in spite of its recognition of the need for trust management reform. The Committee "wholeheartedly approved the Department of the Interior's announced plans for full consultation" with Indian tribes. In doing so, the Committee acknowledged that "an open and positive dialogue with those most directly affected by this reorganization is fundamental" to the success of the consultation process. The Committee recognized that "[q]uestions concerning the exact structure of the new Bureau, the ramifications of a reorganization on the remaining functions of the Bureau of Indian Affairs, and potential outyear costs of the reorganization are of special interest to many Senators." The Committee expected that the Department of the Interior would incorporate "additional information, conclusions and recommendations" of both the Department of the Interior and the Indian tribes in any further reprogramming request.

In Resolution CLLBT-08-01, the Council also requests that a number of principles be embraced by the Department of the Interior in proceeding with trust management reform. The Council requests that any trust reform effort preserve, enhance, and in no way diminish the trust responsibility that the United States owes to Indian tribes and individuals. Any trust reform effort shall affirm and support tribal sovereignty, self-governance, and self-determination as recognized in treaties, statutes, executive orders and regulations. Trust reform shall encompass all aspects and functions that the United States performs on behalf of the Indian tribes.

The Council requests that any reform implement the goals of decentralization, flexibility for each reservation or service area to tailor programs to the needs of individual Indian tribes, and the creation of well-defined duties of each federal official and employee relative to trust management. Centralized record-keeping systems should track information needed on a nationwide basis. But these records must be maintained in a manner consistent with trust responsibilities and managed in a manner which will avoid their destruction or loss, and ensure that they are available to the federal government, the tribal government, and the affected individual Indian allottees. The Council requests that Indian hiring preference be applied in all trust reform activities.

The Council requests that any cost savings generated by any proposed reorganization go directly to increase direct services at the local level, including those provided by direct federal services, self-determination contracts and grants, and self-governance compacts. Rather than being driven by perceptions of administrative convenience at the central level, increased funding for trust reform should be designed to address the need to improve services at the reservation level. No funds should be expended for trust reform or payment of damages in a manner that would detract from the quality or quantity of services currently provided to Indian tribes and individuals.

With regards to the need to compensate Indian individuals or tribes for trust mismanagement, the Council requests that assessment of damages determined in the Cobell or any other litigation for past mismanagement of trust resources be separately funded and proceed on a parallel track to funding for trust reform. The Council supports the extension of any statute of limitation which might be argued to apply to any and all past mismanagement of trust assets, to allow all efforts to be exhausted to identify all past mismanagement of trust resources, including but not limited to physical trust assets and financial resources derived from such sources.

It is notable that in each of the scoping meetings held by the Department of the Interior in Spokane, to Albuquerque, Minneapolis, Oklahoma City, Rapid City, San Diego, Anchorage, and Washington D.C. the Indian tribes attending the meetings unanimously rejected the proposal for establishment of the new BITAM. The rejection by the Indian tribes of the Department's proposal for the establishment of the BITAM were based on unanswered questions by the Indian tribes relative to the proposed structure of the BITAM, the impacts of the creation of the BITAM on the remainder of the BIA, the affect of the proposed reorganization on the delivery of direct services to members of Indian tribes, including services provided by federal agencies, and by the Indian tribes through self-determination contracts and grants, as well as self-governance compacts. As well, the Indian tribes questioned the decision of the Department of the Interior to place its BITAM transition activities in the control of Ross Swimmer and Steven Griles, Deputy Secretary of the Interior, both long-time Department of the Interior officials whose lack of leadership and effectiveness in trust management have been instrumental in the continued mismanagement of individual and tribal Indian trust assets.

However, the Indian tribes remain dedicated to effective trust management reform. In this effort, member tribes of the Council of Large Land Base Tribes, including The Chippewa Cree Tribe of the Rocky Boy's Reservation, The Confederated Salish and Kootenai Tribes of the Flathead Nation, and The Navajo Nation participated last weekend, February 1 - 3, 2002, in a meeting of tribal leaders at the National Conservation Training Center in Sheperdstown, West Virginia. This meeting was scheduled and hosted by Secretary Norton, who visited briefly with the group of tribal leaders late on Friday and late on Sunday afternoon.

The group of tribal leaders who met at Sheperdstown last weekend was not an inclusive meeting. The National Conservation Training Center was managed as a secured federal facility, accessible only to certain named individuals through a security gate. Only two representatives, and one alternate, from each of the twelve BIA Regions were included in the group of tribal leaders. While the group was initially planned to have included technical representatives from ten organizations in which Indian tribes are members, including the Council of Large Land Base Tribes, these technical representatives were later excluded from the group. There were tribal leaders from over one hundred Indian tribes who were not provided the opportunity to participate in that retreat at Sheperdstown. They were left behind at the Hyatt Regency Crystal City to wonder what the Department of the Interior and the small group of tribal leaders might decide, on behalf of the entirety of all 575 Indian tribes, during that one weekend of closed meetings. The tribal leaders who were closed out of the meeting did not have that crucial opportunity to be included in an open and positive dialogue with the Department of the Interior. This failure must not be repeated in future meetings of the tribal leaders group.

The tribal leaders from the Council of Large Land Base Tribes who were admitted to the Sheperdstown retreat as representatives from the twelve BIA Regions reported back about the discussions held there. There were nine alternative proposals to BITAM that were received and subjected to preliminary review, including proposals from The Chippewa Cree Tribe of the Rocky Boy's Reservation, The Confederated Salish and Kootenai Tribes of the Flathead Nation, The Cheyenne River Sioux Tribe, The Oglala Sioux Tribe, and The Hoopa Tribe. There were also proposals submitted by the Intertribal Timber Council, the United Southern and Eastern Tribes, and the Van Ness Feldman Law Firm. All of these alternative proposals address matters that would be significant improvements over the BITAM proposal. Although the tribal leaders discussed the proposals and internal organizational issues, they were unable to reach a consensus by the end of the weekend. The tribal leaders have agreed to three committees who have set a meeting next week in Portland, Oregon to perform an in-depth analysis of these proposals, along with others that may be submitted by tribes and other organizations, and to discuss the internal organizational issues.

There are a number of general guiding principles that were common to the alternative proposals. There was strong support within the group to keep BIA as a viable agency, to provide a mechanism for establishment of trust standards that can be tailored by Indian tribes to their individual needs and values, for the establishment of a trust management system that is consistent with principles of self-determination and self-governance, and for the provision of resources and expertise at the local tribal, BIA Regional and Agency levels. While these general guiding principles must be incorporated into any trust reform plan, there obviously must be much more work performed with open and full consultation with all Indian tribes prior to the determination of a plan for real, sustained, and effective trust asset management reform.

This is not a process that can or should be conducted in haste or in secret. The Congress passed the Indian Self-Determination and Educational Assistance Act, the Self-Governance Act of 1988, and the American Indian Trust Fund Management Reform Act of 1994 following extensive hearings and consideration of the concerns and interest of the Indian trust beneficiaries. The proposal of the Department of Interior to establish the BITAM, as understood by the Council, would administratively amend these laws without action by the United States Congress. The Council is concerned about such a process and believes that laws passed by the United States Congress should not be undermined by administrative actions. The gains made by Indian tribes in the areas of self-determination and self-governance compacts should not be reversed or jeopardized by an administrative reorganization which is contrary to the spirit, if not the letter, of the law

I would like to emphasize that the crucial matter of trust asset management reform must not be driven by the current exposure of the Department of the Interior or the Secretary of the Interior to sanctions in the Cobell litigation. These matters must be separated, to the maximum extent, from the much larger matter of trust asset management reform in order for the interests of both the Individual Indian Money (IIM) account holders and Indian tribes to be effectively and adequately addressed. The IIM account holders who have had their primary or sole income halted by the Department of the Interior computer shutdown are being harmed, physically, emotionally, and spiritually, as well as financially. They are unable to buy food, shelter, clothing, and other household items. They are unable to make payments on vehicles, houses, and business equipment. All of these harms are a direct result of the failure of the Department of the Interior to make payments to these IIM account holders from funds earned from their own allotted lands. The Department of the Interior must be required to make estimated payments to these IIM account holders, based on historical payments, in order to decrease the unnecessary suffering and harm that they are sustaining.

In its 2002 Winter Session, the Navajo Nation Council had to appropriate over \$527,000 to assist Navajo IIM account holders whose lives have been disastrously affected by the failure of the Department of the Interior to issue checks for income due to them. This is only the latest instance wherein the trust beneficiary Indian tribes have been forced to undertake significant financial detriments because of the failure of the Department of the Interior to adequately address its trust responsibilities. The Council of Large Land Base Tribes requests that this Committee assist its members, and all Indian tribes and peoples to correct this deplorable situation. Thank you, Mr. Chairman.

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